

**Special Case No.39/2018**  
(CNR No.MHPU01-009593-2018)

State of Maharashtra  
(Thorough Deccan Police Station, Pune) .. Complainant

Vs.

Surendra Shankar Pal .. Applicants/ Accused  
Sameer Rajnikant Sadavarte

**COMMON ORDER BELOW EXH. 159 & 181**

1. Applicants abovenamed have preferred applications for discharge under Section 227 of Cr.P.C.

**Brief facts of the case of prosecution :-**

2. Since 2012 the deceased was having dispute in respect of transactions of different lands with accused Nitin Dangat and applicant Sameer Sadavarte. In 2015 the deceased Deven Shah tried to settle the dispute through accused Rajesh @ Pandit Agarwal, Ravindra Chorge and associates. Rajesh @ Pandit Agarwal received Rs.75,00,000/- as part payment of his commitment from deceased Deven Shah. Subsequently the deceased had allegedly avoided to pay the remaining part payment of Rs.30,00,000/- to Rajesh @ Pandit Agarwal and his associates. Taking advantage of the situation, Nitin Dangat and applicant Sameer Sadavarte with a view to obtain pecuniary gain, conspired to murder Deven Shah with the help of Sonu Rathod and his gang members.

3. It is further alleged that Sonu Rathod provided country

made pistol to Rahul Shivtare. Accused Nitin Dangat transferred Rs.2,00,000/- in the account of Rajesh @ Pandit Agarwal. In turn, Rajesh Agarwal had provided pistol and rounds to accused Ravindra Chorge. Accused Rahul Shivtare and Ravindra Chorge, in furtherance of the conspiracy, committed murder of Deven Shah by using country made pistol provided by accused Sonu Rathod and Rajesh Agarwal. Subsequently the shooters Ravindra Chorge and Rahul Shivtare were kept in lodge at Ujjain. Accused Ravindra Chorge was arrested. He was provided shelter by accused Abhimanyu Tiwari. Subsequently accused Rahul Shivtare was arrested. The weapons used in commission of crime were seized at the instance of accused Ravindra Chorge while memorandum panchanama from the office of applicant Surendra Pal. Subsequently approval was sought for invoking provisions of MCOCA Act, which was granted. On completion of investigation charge sheet was filed against accused for the offences punishable under Sections 302, 307, 120(B), 201 of the I.P.C., Section 3 r/w 25 and 27 of the Arms Act, Section 34(1)(3) r/w 35 of the Maharashtra Police Act and Section 3(1)(i), 3(2), 3(3) and 3(4) of the MCOCA Act.

**Arguments :-**

4. Learned advocate for applicant Sameer Sadavarte, Mr. S.S. Wagh, has argued that there is absolutely no evidence to show that accused Sameer Sadavarte was involved either in conspiracy or in commission of murder of deceased. He has taken me through charge-sheet and has argued that neither the confessional statements of co-accused nor statements of any of the witnesses

could connect accused Sameer Sadavarte with commission of crime, that there were disputes about land transactions between the accused and the deceased but those were sorted out and the accused was finding out same solution for which he was in contact with deceased. According to him, accused Sameer Sadavarte was in contact with accused Nitin Dangat only for the purpose of business and not for any conspiracy. According to him only on the basis of the call records between deceased and accused Nitin Dangat, he cannot be implicated. It is argued that neither before nor after commission of the offence the applicant was in contact with the co-accused. Therefore, he has claimed discharge.

5. Learned advocate for applicant Surndera Pal, Mr. Nitin Shejpal, has argued that there is no incriminating evidence against him and therefore he deserves to be discharge. According to him, recovery of firearm from his office cannot be attributed to him. The accused played no role in conspiracy or in commission of offence. He carried no intention to commit murder and he has been falsely implicated. It is, therefore, he has also prayed for discharge.

6. Learned Spl. P.P. Smt. Pawar has argued that there is lot of evidence to show land disputes between deceased, accused Nitin Pawar and Sameer Sadavarte, that accused Sameer Sadavarte and accused Nitin Dangat were not making payment of money and therefore deceased was compelled to introduce accused Rajesh @ Pandit Agarwal for recovery, unfortunately accused Nitin Dangat and accused Sameer Sadavarte conspired with accused Rajesh @ Pandit Agarwal and other accused, committed murder of Deven

Shah. She has also taken me through the charge-sheet, particularly the FIR and supplementary statement of the informant to point out the disputes between the accused and the deceased. According to learned Spl. P.P. Smt. Pawar, there is deep conspiracy held by all the accused, including the accused claiming discharge which can be pursued from the CDR and the details of account. She has pointed out that on the date of incident accused Sameer Sadavarte made seven phone calls to the deceased and therefore his involvement in the conspiracy is clear. She has taken me through the previous bail orders and argued that all the accused, including the accusing claiming discharge, have specific role to play in offence and therefore charge may be framed against all of them and they may be put on trial.

7. Learned advocate for both sides have cited certain judgments. Those are taken up at appropriate stage in the further discussions.

**Reasons :-**

8. On hearing both the sides following facts became clear :

i)	There were several transaction between deceased Deven Shah, accused Nitin Dangat and accused Sameer Sadavarte in respect of various lands.
ii)	Disputes took place between the deceased and both the accused in year 2012 as the transactions could not be materialized.
iii)	In year 2015, deceased Deven Shah contacted witnesses Vijay Hajare, Kishor Aware, Vitthal Nimbalkar and Prakash Vighne with a request to help him in recovery of money from accused Nitin Dangat.

iv)	The deceased agreed to give 30% commission against the recovery from accused Nitin Dangat.
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9. After the meeting which took place between witnesses Prakash Vighne, Vitthal Nimbalkar, Vijay Hajare, accused Ravindra Chorge, Rajesh @ Pandit Agarwal, accused Nitin Dangat was called at the office of a friend of witness Kishor Aware. At that time deceased Deven Shah, accused Nitin Dangat, witness Vitthal Nimbalkar, accused Ravindra Chorge, Rajesh @ Pandit Agarwal and Vijay Hajare were present. In the said meeting, the witnesses and accused Rajesh @ Pandit Agarwal gave understanding to accused Nitin Dangat to get the dispute settled amicably. This fact is recited in the statement of all the abovesaid witnesses.

10. After about one month of the said meeting deceased Deven Shah and accused Nitin Dangat, unanimously, declared that their dispute is settled to the tune of Rs. 3.5 crore. Out of the said amount, accused Nitin Dangat had issued a post dated cheque of Rs. 3 crore to the deceased and paid an amount of Rs.50,00,000/- in cash. At that time, the deceased made it clear that he would take care of the transaction between himself and Sadavarte (Sameer Sadavarte) separately. The relevant portion of the statement of witness Prakash Vighne is quoted hereinunder :

“एक महिन्याचे कालावधीनंतर देवेन शहा व नितीन दांगट यांनी मला, रवि चोरगे, पंडीत व विजय हजारे यांना देवेन शहा यांचे ऑफिसला बोलावून घेवून ‘सदावर्ते व माझ्यामधील व्यवहार मी बघून घेईन व नितीन दांगट यांना पौडच्या जागेच्याबाबत दिलेले कमिशनमध्ये तडजोड होवून एकूण ३.५ कोटी रूपये निघाले आहेत त्यापैकी नितीन टांगट मला ३ कोटीचा पोस्ट डेटेड चेक दिला आहे व उरलेले ५०

लाख रूपये रोख दिले आहेत' असे देवेन शहा यांनी सांगितले."

11. Commission amount of the mediators was settled having regard to the dues recoverable from accused Nitin Dangat. Out of the commission amount, an amount of Rs.75,00,000/- was paid by deceased Deven Shah to accused Rajesh @ Pandit Agarwal. Out of the said amount, accused Rajesh @ Pandit Agarwal paid Rs.2,50,000/- to witness Prakash Vighne and also handed over commission amount of Rs.2,50,000/- for witness Vitthal Nimbalkar to witness Prakash Vighne. Similarly he shared the commission amount with the other mediators. As such, part payment of the commission amount was made by the deceased to the mediators, particularly to accused Rajesh @ Pandit Agarwal. Commission amount of Rs.30,00,000/- was unpaid and it became the cause of the fateful death of Deven Shah.

12. The settlement between accused Nitin Dangat and deceased Deven Shah cannot be materialized. Accused Nitin Dangat did not pay the due amount to the deceased. He promised to give land to the deceased but it was also not so done. The mediators tried to enforce payment of dues but accused Nitin Dangat showed his intention to contact police. Therefore, the mediators, except accused Ravindra Chorge, had given up the subject. Accused Ravindra Chorge was visiting the office of the deceased and demanding remaining amount of commission i.e. Rs.30,00,000/-.

13. Accused Ravindra Chorge, Rajesh @ Pandit Agarwal

then hatched conspiracy to commit murder of deceased Deven Shah as he was not making payment of the remaining amount of commission. They secured firearm with the help of accused Nitin Dangat. One more firearm was secured by accused Rajesh @ Pandit Agarwal. Accused Ravindra Chorge got involved accused Rahul Shivtare and committed murder of deceased Deven Shah on 13/1/2018. When his son, informant Atish Shah tried to catch them, they also fired gun shots against him. They both then took shelter with accused Surendra Pal, a friend of accused Rahul Shivtare, residing at Manziwada Naka, Thane. They kept the pistol used in commission of crime with accused Surendra Pal and then left the spot. Thereafter they came to be arrested from different places.

14. During investigation, it is revealed that accused Abhimanyu Tiwari had provided shelter to accused Rahul Shivtare at his residence at Thane. It is further revealed that the country made pistol was secured from accused Sunil @ Sonu Rathor. It is also revealed that accused Sunil @ Sonu Rathor has sheltered accused Ravindra Chorge and accused Rahul Shivtare at Ujjain for two days. As such, involvement of accused No.1 Ravindra Chorge, No.2 Rahul Shivtare, No.3 Surendra Pal, No.5 Sunil @ Sonu Rathor, No.6 Nitin Dangat, No.8 Rajesh @ Pandit Agarwal and No.9 Abhimanyu Tiwari is clear from the documents and statements filed with the charge-sheet. The weapon is seized during investigation. The material with the charge-sheet is sufficient to frame charges against the above accused. Accused No.4 Shankar Navale is already discharged.

15. As mentioned above, the deceased himself had made it clear that he would separately look into the dispute of dues between himself and accused Sameer Sadavarte, when he settled the accounts with accused Nitin Dangat. Even the commission of mediators was fixed on the basis of recovery of dues from accused Nitin Dangat. It is worthwhile to note that the task of recovery of dues was not assigned by the deceased to the mediators or anybody else. In short, there was no reason for accused Sameer Sadavarte to come in contact with the members of organized crime syndicate who had undertaken the task of recovery of dues on behalf of the deceased. When it is so, it cannot be said that accused Sameer Sadavarte was having motive to commit murder of the deceased.

16. Accused Nitin Dangat had provided an amount of Rs.2,00,000/- for purchase of firearm to co-accused. There are CDRs between accused Ravindra Chorge, Rahul Shivtare, Rajesh @ Pandit Agarwal and Nitin Dangat. The material on record shows that accused Nitin Dangat was a part of the conspiracy to commit murder of Deven Shah. It can be said that he was the key person who activated the shutters. However, there is absolutely no evidence to show accused Sameer Sadavarte played any role in any of the above activities, or that he was with accused Nitin Dangat during any of the acts committed in furtherance of the conspiracy. Also there is no evidence to show that he was in contact with the members of organized crime syndicate.

17. The deceased made no statement against accused Sameer Sadavarte after the settlement of Rs.3.5 crore. The illegal

consequences ensued only because accused Nitin Dangat failed to pay agreed settlement amount to the deceased. Accused Sameer Sadavarte was in contact with the deceased as well as Nitin Dangat. However, these phone contacts are not sufficient to connect him with the conspiracy because he was having land transactions with the deceased as well as with accused Nitin Dangat. On the date of incident also accused Sameer Sadavarte had seven to eight phone calls with the deceased. If really he would have been a part of conspiracy to commit murder, he must not established contact with the deceased on that day, that too repeatedly.

18. Learned Special Public Prosecutor has made reference to confessional statement of accused Ravindra Chorge. According to him, firstly meeting took place between the deceased, accused Nitin Dangat, Rajesh @ Pandit Agarwal and other mediators. In the said meeting accused Nitin Dangat assured to settle the dispute by making clear title of the lands. Thereafter, according to the accused, on the next day meeting took place between deceased Deven Shah, accused Sameer Sadavarte and accused Nitin Dangat and in the said meeting they had settled all the disputes, and that accused Nitin Dangat and Sameer Sadavarte agreed to pay Rs. 5 crore to the deceased. Based upon this statement appearing in the confessional statement of accused Ravindra Chorge, it is vehemently argued by Special Public Prosecutor that accused Sameer Sadavarte was also having motive to commit murder of the deceased alongwith accused Nitin Dangat.

19. The arguments cannot be accepted because the next

sentence of accused Ravindra Chorge is that the deceased had agreed to pay commission of Rs.1.10 crore against recovery of dues from accused Nitin Dangat. It is further recited in his statement that the deceased paid token amount of Rs.75,00,000/- and the remaining amount was agreed to be paid afterwards. Necessarily no commission was paid or promised to be paid by the deceased for recovery of any amount from accused Sameer Sadavarte. The confessional statement of accused Ravindra Chorge has to be read alongwith statement of witness Prakash Vighne, as referred above.

20. What is necessary to note here is that there is absolutely no evidence of common meeting of accused Sameer Sadavarte and other accused, either before or after commission of offence. There were no phone calls between Sameer Sadavarte and other accused immediately before and after the incident. The dispute between Sameer Sadavarte and deceased Deven Shah was separately dealt with by the deceased. The dues with accused Sameer Sadavarte were not the subject matter which was to be dealt with by the organized crime syndicate. As such, motive to commit murder of Deven Shah cannot be attributed to accused Sameer Sadavarte. Also in the absence of any evidence of conspiracy against accused Sameer Sadavarte, no charge can be framed against him.

21. Learned Spl. P.P. Smt. Pawar has brought to my notice different account extracts, agreements of certain lands to show that huge amounts were paid to the agriculturist by the deceased through accused Sameer Sadavarte and there were dues of huge amounts receivable from accused Sameer Sadavarte. Even if all the

account extracts and agreements are taken into account, it can at the most be said that there were financial disputes between accused Sameer Sadavarte and the deceased. However, that evidence is not sufficient to connect him either with the conspiracy or with the commission of offence.

22. Learned Spl. P. P. Smt. Pawar has argued that there is *prima facie* case made out against accused Sameer Sadavarte and if *prima facie* case is made out, discharge is not possible. For this, she has referred to the order of Hon'ble High Court passed below bail application of accused Sameer Sadavarte. While passing order below bail application of the accused (dated 24/2/2020), on the basis of the calls between deceased, accused Sameer Sadavarte and accused Nitin Dangat, and on the basis of financial disputes it is observed that there is *prima facie* case and therefore the bail is rejected. On this point, she has relied upon judgment of Hon'ble Bombay High Court in the case of **Govind Sakharam Ubhe Vs. State of Maharashtra, 2009 ALL MR (Cri.) 1903**. The relevant para No.20 of the said judgment is quoted herein under :

*“20. In State of Maharashtra & Ors. V. Som Nath Thapa & Ors.(1996) 4 SCC 659, the Supreme Court observed that if there is a ground for presuming that the accused has committed the offence, it can be said that a prima facie case has been made out against the accused. Even if the court finds that the accused might have committed the offence, it can frame the charges. The Supreme Court clarified that at the stage of framing of charge, probative value of the materials on record cannot be gone into.”*

23. There can be no dispute about legal proposition set out

as above. However, in the present case, there is no sufficient material to raise a presumption that accused Sameer Sadavarte was a conspirator. As discussed above, only on the basis of history of telephonic calls between accused Sameer Sadavarte, the deceased and accused Nitin Dangat, no motive can be attributed to accused Sameer Sadavarte. Also there is no material even to suggest that he was a party to the conspiracy hatched by accused Nitin Dangat and other accused.

24. At this juncture it is necessary to take into account the scope of Section 227 of Cr.P.C. *vis a vis* expected scrutiny of material filed alongwith the charge-sheet. On this point, it would be proper to quote the observations of Hon'ble Supreme Court from the judgment in the case of **Dilawar Balu Kurane Vs. State of Maharashtra, Criminal Appeal No. 8 of 2002 Decided On: 08.01.2002**. Relevant portion from Para No. 12 of this judgment is quote hereinunder :

*“12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weight the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; **whether the materials placed before the court disclose grave suspicion against the accused** which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; **by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in***

*exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [See **Union of India v. Prafulla Kumar Samal and Anr.** MANU/SC/0414/1978 1979CriLJ154].”*

25. In the present case no grave suspicion against accused Sameer Sadavarte either in hatching of conspiracy or in commission of murder of deceased Deven Shah is disclosed from the charge-sheet. Even there is no sufficient material to attribute motive on his part. Merely because the informant has suspected his involvement, in the absence of sufficient material, no charge can be framed against him.

26. While deciding bail application the Court is not expected to scrutinize the material filed alongwith the charge-sheet meticulously. It is said to a birds eye view which is taken by the Court when the bail plea is considered. The considerations and expected scrutiny of record at the stage of deciding framing of charge or while dealing with application for discharge are different. The Court has to carefully peruse the record and to arrive at a proper decision as to whether the material is sufficient to frame charges against the accused or not. The nature of consideration thus differ while dealing with application for discharge. Therefore, the arguments of learned Special Public Prosecutor that bail application of accused Sameer Sadavarte is rejected and therefore his discharge application be also rejected, is not acceptable. A

liberty of a citizen cannot be curtailed unless there is sufficient material available against him. No accused can be ordered to face charge of some offence unless there is strong basis. Merely on suspicion, nobody can be put on trial, that too for a serious charge of murder or conspiracy to commit murder. Therefore, I find except accused Sameer Sadavarte, charge can be framed against all the accused. With this, I pass following order.

**ORDER**

1. Application of accused Sameer Rajnikant Sadavarte (Exh.181) is allowed.
2. Application of accused Surendra Shankar Pal (Exh.159) is rejected.
3. Accused Sameer Rajnikant Sadavarte is hereby discharged from the offences punishable under Sections 302, 307, 120(B), 201 of the I.P.C., Section 3 r/w 25 and 27 of the Arms Act, Section 34(1)(3) r/w 35 of the Maharashtra Police Act and Section 3(1)(i), 3(2), 3(3) and 3(4) of the MCOG Act., as per Section 227 of Cr.P.C.
4. He be set at liberty from this case.
5. Charge be framed against other accused.

Sd/-

Pune.  
Date : 26/04/2023

(Satyanarayan R. Navander)  
Judge, Special Court  
MCOG Act, Pune.

<b><u>Certificate</u></b>	
I affirm that the contents of PDF file Judgment are same word for word as per original Judgment.	
Name of Steno	Shri. R.A. Shimpi, Steno (I)
Court name	Shri. S. R. Navandar, Addl Sessions Judge, Pune.
Order dictated on	26/04/2023
Order transcribed on	27/04/2023
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